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SECOND DIVISION

[G.R. No. 266636. July 29, 2024]

PHILHARBOR FERRIES AND PORT SERVICES, INC., *Petitioner, v.* **FRANCIS C. CARLOS,** *Respondent.*

D E C I S I O N

LOPEZ, J., *J.*:

This Court resolves a Petition for Review on *Certiorari*[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals (CA), which affirmed with modification the Decision[4] of the Regional Trial Court (RTC) that dismissed the Amended Complaint for damages filed by Philharbor Ferries and Port Services, Inc. (Philharbor) against its former Chief Operating Officer Francis C. Carlos (Carlos) and ordered the payment of moral damages, exemplary damages, and attorney's fees in favor of Carlos.

Philharbor is a corporation duly organized and existing under the laws of the Republic of the Philippines.[5] It is engaged in the business of commercial shipping, shipping management, and other maritime activities.[6]

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1 *Rollo*, pp. 10–50.

2 *Id.* at 52–75. The December 19, 2022 Decision in CA-G.R. CV No. 112692 was penned by Associate Justice Jennifer Joy C. Ong and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Geraldine C. Fiel-Macaraig of the Fifth Division, Court of Appeals, Manila.

3 *Id.* at 77–79. The March 30, 2023 Resolution in CA-G.R. CV No. 112692 was penned by Associate Justice Jennifer Joy C. Ong and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Geraldine C. Fiel-Macaraig of the Fifth Division, Court of Appeals, Manila.

4 *Id.* at 1085–1092. The January 10, 2018 Decision in Civil Case No. 10-017 was penned by Presiding Judge Antonieta Pablo-Medina of Branch 276, Regional Trial Court, Muntinlupa City.

5 *Id.* at 12.

6 *Id.* at 103.

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In its Complaint,[7] Philharbor alleged that on December 1, 2002, Carlos was appointed as chief operating officer of its Port and Ferry Operations, which appointment was renewable annually by its Board of Directors. The scope of his responsibility included, among others, "maintain[ing] the ship in class and in efficient and seaworthy condition with manager's power to negotiate and approve repair and maintenance contracts."[8] In an Appointment Letter,[9] Carlos, as the chief operating officer of the Archipelago Group—a group of subsidiary corporations, including Philharbor—was charged with the following responsibilities:

a. Shall plan, organize, and control all the day-to-day activities of the Company;
b. Shall collaborate with the President/ Chief Executive Officer in the overall administration of the Company;
c. Shall be responsible for the management of the Company's activities to ensure maximum profits commensurate with the best interest of shareholders, customers, employees and the public;
d. Shall develop and implement space-planning strategies to accommodate current and future organizational needs;
e. Shall provide a high level of customer relations and service, and shall ensure compliance with Company policies and procedure;
f. Shall assist in attaining established Company's operational and financial goals;
g. Shall perform management review/ operations review of all business units and support units;
h. Shall initiate fiscal policies to strengthen financial monitoring and management among companies within the group; [and]
i. Shall act as Designated Person Ashore of the Company and is responsible for the implementation of the Safety Management System for owned, operated, shipmanaged[,] and chartered vessels[.][10]

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[7] *Id.* at 102–112.

[8] *Id.* at 115.

[9] *Id.* at 117–118.

[10] *Id.*

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In line with his responsibilities, Carlos was authorized to approve the capital expenditure for the repair and maintenance of the vessels owned and operated by Philharbor. Before any disbursement for such purpose, an application of authority for capital projects expenditure must first be approved by Carlos.[11]

Philharbor further alleged that its Chairman and Chief Executive Officer, Christopher Pastrana (Christopher), even appointed Carlos as trustee for his Philharbor shares of stock because of his apparent probity.[12]

After Carlos's departure from the corporation on August 10, 2009,[13] a routine audit was conducted by the Accounting Department of Philharbor. It was discovered that Carlos, during his tenure as chief operating officer, acted fraudulently and negligently in approving authorities for capital projects expenditure to the damage and prejudice of Philharbor.[14]

The audit found that in the mandatory dry docking of M/V Maharlika Dos, the approved authority for capital projects expenditure was PHP 2,995,283.50.[15] However, the total actual expenditure was PHP 15,599,593.64. As a result, Philharbor incurred losses in the amount of PHP 12,604,310.14.[16]

In a similar manner, in the mandatory dry docking of M/V Maharlika Siete, the approved authority for capital projects expenditure was PHP 10,753,730.50.[17] The total actual expenditure was PHP 15,284,697.66, resulting to a financial loss in the amount of PHP 4,530,967.16.[18]

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[11] *Id.* at 54.

[12] *Id.*

[13] *Id.* at 119.

[14] *Id.* at 54.

[15] *Id.* at 125.

[16] *Id.* at 55, 126–128.

[17] *Id.* at 129.

[18] *Id.* at 55, 131.

Thus, on August 17, 2009, the Archipelago Group, which includes Philharbor, through counsel, sent a Demand Letter[19] to Carlos, demanding the payment of PHP 30,000,000.00 as loss incurred.[20]

In response, Carlos, through counsel, sent a Letter[21] dated September 11, 2009, disputing Philharbor's allegations against him. In his Letter, Carlos asserted, among others, that the financial statements and corporate records negates the allegations of mismanagement in handling the affairs of the Archipelago Group. As per certified records, the Archipelago Group has been running a profitable operation since its earnings before interests, taxes, depreciation, and amortization from 2005 to 2009 is around PHP 173,538,000.00 with an accumulated net income of PHP 38,000,000.00, and its paid-up capital has increased from PHP 2,500,000,00 to PHP 198,300,000.00. Assuming arguendo that the Archipelago Group had indeed incurred losses, Carlos argued that he cannot be held personally liable for acts or contracts he entered into in his capacity as a corporate officer and in the exercise of his business judgment in the absence of any showing that he had exceeded his authority.[22]

Due to Carlo's refusal to pay, Philharbor filed a Complaint[23] for damages against Carlos on February 26, 2010, which prayed for the award of: (1) PHP 10,000,000.00 as actual damages—reduced from the supposed PHP 30,000,000.00 loss in view of prohibitive filing fees; (2) PHP 100,000.00 as exemplary damages; and (3) PHP 100,000.00 as attorney's fees.[24]

In his Amended Answer,[25] Carlos denied the allegations against him. He claimed that on November 15, 2002, he was employed

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[19] *Id.* at 132–133.

[20] *Id.*

[21] *Id.* at 134–135.

[22] *Id.*

[23] *Id.* at 102–112.

[24] *Id.* at 110.

[25] *Id.* at 154–165.

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by Philharbor, and not appointed as Philharbor had insisted. He explained that at that time, only Philharbor existed, and that the Archipelago Group was only created sometime in 2007. As early as April 2009, he expressed his intention to avail of optional retirement. However, it was not until August 2009 that his employment relationship with Archipelago Group was severed. Contrary to Philharbor's allegation that he willfully tendered his courtesy resignation, Carlos claimed that he was constructively dismissed. Roland Joey R. De Lara, then Chairman of the Archipelago Group, requested all corporate officers to tender their courtesy resignation to give the new majority investors a free hand in selecting new officers. Consequently, he filed an illegal dismissal case before the National Labor Relations Commission (NLRC). Carlos claimed that the complaint was a mere retaliatory action by Philharbor and Archipelago Group, intended to harass him after he filed a just and meritorious labor case.[26]

Carlos further denied being a trustee for Christopher's shares since there was not any such deed or instrument executed between them, nor was there any intention to create a trust relationship over Christopher's shares in Philharbor. His stockholdings were in fact granted by way of benefits for the valuable services he rendered in the corporation.[27]

For his defense, Carlos primarily argued that Philharbor has no cause of action against him as it was not a real party in interest relative to the alleged damage caused. The pieces of documentary evidence presented by Philharbor in support of its claims merely referred to the damage sustained by the Archipelago Group as a whole, without any specific reference to the damages sustained by Philharbor. While Philharbor is a constituent company of the Archipelago Group, Carlos insisted that any damage or loss incurred by the Archipelago Group is not equivalent to damage or loss to Philharbor on account of their separate legal personalities. Even if Philharbor has a cause of action, the Complaint remained

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[26] *Id.* at 140–141.

[27] *Id.* at 140.

defective for failure to specifically allege the purported inaction, fraud, negligence, and bad faith in violation of Rule 8, Section 5 of the Rules of Court. In any case, Carlos asserted that the authorities for capital projects expenditure cited by Philharbor were approved following the standard procedure, which did not, in any way, redound to his personal benefit, and that all expenses claimed by Philharbor were incurred pursuant to the maintenance activity mandated by Maritime Industry Authority (MARINA). It is common industry experience that actual expenditures are higher than the budgeted amounts. Thus, Carlos maintained that the incurred amount in excess of the initial estimates were fully accounted for as necessary repairs were only determined after the vessel was dry-docked.[28]

In sum, Carlos argued that he cannot be made personally liable for any disposition of corporate assets and any business losses in the mandatory dry docking of the vessels operated by Philharbor made in compliance with company procedure and in the absence of any proof of negligence.[29]

By way of counterclaim, Carlos alleged that the filing of the false and groundless complaint caused him mental anguish, serious anxiety, a besmirched reputation, wounded feelings, and moral shock. Thus, Carlos prayed for the award of PHP 300,000.00 as moral damages, PHP 200,000.00 as exemplary damages, and PHP 100,000.00 as attorney's fees.[30]

After the conduct of the pre-trial proceedings, the RTC set the presentation of evidence.[31]

To prove that the actual cost exceeded the project cost for the dry docking of the subject vessels, Philharbor presented Property and Development Officer Melvin M. Dalacat (Dalacat) and Accounting Manager Marilou M. Jagonoy (Jagonoy).[32]

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[28] *Id.* at 136–145.

[29] *Id.* at 146.

[30] *Id.*

[31] *Id.* at 57.

[32] *Id.*

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Dalacat testified that as the property and development officer, he is tasked to evaluate applications for capital projects expenditure and to monitor its implementation. He identified the documents relative to the authorized budget and the total expenses for M/V Maharlika Dos and M/V Maharlika Siete.[33]

For her part, Jagonoy explained the internal procedure for the release of funds for the mandatory dry docking of a vessel. According to her, the Technical Department will prepare the authority for capital projects expenditure for the approval of Carlos. Then, a copy will be forwarded to the Purchasing Department to prepare the necessary purchase order related to the subject vessels, which will then be given to the Accounting Department. She also presented and identified the financial performance of the subject vessels. M/V Maharlika Dos incurred losses of PHP 4,781,155.00 in 2009, earned a net income of PHP 690,220.00 in 2010, and again incurred losses of PHP 9,190,983.00 in 2011. Meanwhile, M/V Maharlika Siete incurred losses of PHP 13,218,267.00 in 2009, PHP 19,469,309.00 in 2010, and PHP 13,809,436.00 in 2011.[34]

On cross-examination, Jagonoy admitted, among others, that: (1) the dry docking of all vessels are mandated by the MARINA every two years for the issuance of the appropriate certificate of seaworthiness; (2) in 2009, the signatories for all the checks of Philharbor were Christopher and his wife, Mary Ann Pastrana (Mary Ann), Philharbor's Assistant Vice President of Finance; (3) the check vouchers needed to be signed or approved by either Carlos or Mary Ann before the designated signatories can sign the checks; (4) in the check vouchers identified by Jagonoy only some were signed by both Carlos and Mary Ann, while the rest were signed by either Mary Ann or Redentor Santos (Santos), Philharbor's Vice President of Finance, or both, or were not approved by the appropriate officer at all; (5) check vouchers are "certified correct by" either Jagonoy or Santos; (6) the Accounting Department needed a purchase order, a sales invoice, and a

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[33] *Id.* at 57–58.

[34] *Id.* at 58–59.

receiving report as supporting documents before it may issue the corresponding check and its voucher; (7) purchase orders were prepared by the Purchasing Department, sales invoices were prepared by the supplier, and receiving reports were prepared by the vessel crew; (8) the budgets stated in the authority for capital projects expenditure for the dry docking and repairs of M/V Maharlika Dos and M/V Maharlika Siete were mere estimates; and (9) the internal procedures that Philharbor had put in place for the preparation and approval of authorities were followed for the issuance of the authority for capital projects expenditure for the dry docking and repairs of M/V Maharlika Dos and M/V Maharlika Siete.[35]

For various reasons, some of the documentary evidence presented by Philharbor were not admitted.[36]

Meanwhile, Carlos presented evidence in support of his defense and counterclaim. He testified that he was employed as chief operating officer by Philharbor from December 2002 until 2009 and by Archipelago Philippine Ferries Corporation (APFC), another constituent company of the Archipelago Group that is separate from Philharbor, in April 2003. During his employment in Philharbor, M/V Maharlika Dos was owned by the Department of Transportation and Communication (DOTC), with Philharbor as its bareboat charterer and ship manager, while M/V Maharlika Siete was owned by APFC, a separate corporate entity.[37]

Carlos elaborated that industry regulations for passenger safety mandate the dry docking of all vessels. The mandatory dry docking usually requires substantial investment from the corporation. As such, it is necessary to earmark a certain amount of capital budget and make initial estimates of the repairs ahead of the actual dry docking. The capital budget are only initial estimates based on the formal quote submitted by the shipyard, which are considered

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[35] *Id.* at 59–60.

[36] *Id.* at 840–841.

[37] *Id.* at 62.

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minimum standard charges. Actual expenditures are however hard to predict due to several variables including the extent of rectification the MARINA auditors and the classification society may subsequently require. Thus, it is common industry experience that actual expenditures are higher than the budgeted amount. The actual expenses incurred normally includes the total cost for major rehabilitation and improvement works during afloat repairs.[38]

Carlos claimed that the internal company procedure was followed for M/V Maharlika Dos and M/V Maharlika Siete. He only approves the capital budget for dry docking repairs after the internal procedure is followed and the necessary checks and reviews had been made. While the ship is undergoing repairs, he reviews the reports and recommendations of the different departments to ensure that what is spent is sensible and necessary.[39]

In explaining the variance between the budget and the actual expenses, Carlos stated that:

> For M/V *Maharlika Dos*, . . . [t]he costs incurred were mostly during afloat repairs and partly during dry docking, while the prepared budget only covered dry docking repairs. He added that funding constraints on Philharbor's end and the insertion of additional works not included in the initial estimate contributed to such variance. While the repairs for M/V *Maharlika Dos* were initially paid by Philharbor, Carlos claimed that Philharbor submitted a statement of expenses to DOTC for crediting against its bareboat charter fees, and that ultimately, DOTC shouldered the expenses as shipowner.
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> For M/V *Maharlika Siete*, . . . [t]he costs incurred were not purely for dry docking but also because of the vessel's severe propeller vibration as a result of its grounding during a typhoon, while the prepared budget only covered dry docking repairs. The vessel also had to be sent to the shipyard well ahead of the dry docking. He added that funding constraints on Philharbor's end and the unavailability of stock or parts contributed to such variance. Carlos clarified that it was APFC, not Philharbor, that paid for the repairs of M/V *Maharlika Siete*, but APFC made a reimbursement

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[38] *Id.* at 62–63.

[39] *Id.* at 63–64.

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claim against the insurance company since the vessel's propeller was damaged when the vessel was grounded during a typhoon.[40] (Emphasis in the original)

After a sedulous review of the case and the evidence presented by the parties, the RTC rendered its Decision,[41] dismissing Philharbor's Amended Complaint for lack of merit, and granting Carlos's counterclaim for moral damages, exemplary damages, and attorney's fees. The dispositive portion of the RTC Decision reads:

> WHEREFORE, premises considered, the instant case is hereby DISMISSED for lack of merit.
>
> The Plaintiff PHILHARBOR FERRIES AND PORT SERVICES INC. is hereby directed TO PAY the Defendant FRANCIS C. CARLOS the following:
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> 1. The amount of ₱300,000.00 as moral damages;
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> 2. The amount of ₱200,000.00 as exemplary damages; and
>
> 3. The amount of ₱100,000.00 as attorney's fees.
>
> SO ORDERED.[42]

In so ruling, the RTC held that Philharbor failed to discharge its burden in proving that Carlos acted in bad faith, with gross or inexcusable negligence, or that he acted outside the scope of his authority as chief operating officer. On the contrary, it was established that Philharbor's internal procedure in the approval of authorities for capital projects expenditure was diligently followed.[43]

Aggrieved, Philharbor moved for reconsideration.[44] For failing to raise any new matter or issue, the RTC denied the motion in an Order.[45]

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[40] *Id.* at 65.

[41] *Id.* at 1085–1092.

[42] *Id.* at 1092.

[43] *Id.*

[44] *Id.* at 1093–1116.

[45] *Id.* at 1134. The August 14, 2018 Order in Civil Case No. 10-017 was penned by Presiding Judge Antonieta Pablo-Medina of the Branch 276, Regional Trial Court, Muntinlupa City.

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Unfazed, Philharbor interposed an appeal before the CA.[46]

In the assailed Decision,[47] the CA held that the RTC committed no reversible error in dismissing Philharbor's Amended Complaint and granting Carlos's counterclaim, disposing as follows:

> **WHEREFORE**, the appeal is **DENIED**. Accordingly, [t]he *Decision* dated 10 January 2018 and *Order* dated 14 August 2018 of the Regional Trial Court of Muntinlupa City, Branch 276, in Civil Case No. 10-017 are **AFFIRMED with MODIFICATION**, such that the monetary awards of Php300,000.00 as moral damages, Php200,000.00 as exemplary damages, and Php100,000.00 as attorney's fees in favor of defendant-appellee Francis C. Carlos shall earn legal interest at the rate of 6% per annum from the finality of this Decision until its satisfaction.
>
> **IT IS SO ORDERED.**[48] (Emphasis in the original)

The CA concluded that the totality of evidence submitted by Philharbor including those excluded or deemed inadmissible by the RTC failed to establish by clear and convincing evidence its allegation of bad faith or gross negligence.[49] It noted the admission of Jagonoy that the internal procedures for the preparation and release of the authorities for capital project expenditure was complied with, which is incompatible with the charge of negligence against Carlos.[50]

Unfazed, Philharbor filed a Motion for Reconsideration.[51]

Finding no compelling or justifiable reason to reverse or set aside its earlier Decision, the CA denied the Motion in its assailed Resolution.[52]

Hence, Philharbor filed the instant Petition.

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[46] *Id.* at 1135–1137.

[47] *Id.* at 52–75.

[48] *Id.* at 74–75.

[49] *Id.* at 86.

[50] *Id.* at 70.

[51] *Id.* at 80–101.

[52] *Id.* at 77–79.

Philharbor argues that Carlos was negligent in his duties as chief operating officer when he failed to accomplish the objectives embodied in his appointment papers, which includes ensuring maximum profits, attaining the company's operational and financial goals, and strengthening the company's financial monitoring and management. In fine, Carlos failed to monitor and manage the dry-docking expenses, which resulted in significant financial losses to the detriment of the corporation. In any event, Carlos's declaration that he had control over the operations of Philharbor is an admission of negligence and responsibility for the losses incurred by the corporation.[53]

Philharbor insists that the fact that its chief executive officer signed the checks and approved the disbursement covering the activity does not absolve Carlos with his duty of exercising financial prudence in the performance of his official duties.

Further, Philharbor maintains that contrary to the finding of the CA, it was able to establish by preponderance of evidence its cause of action. The excessive expenditure on dry docking is a clear indication of gross negligence. Carlos, having control over the entire process and with knowledge of the actual expenses, unilaterally authorized the over-expenditure on dry-docking costs without prior approval from the board of directors.[54]

In assailing the award of moral damages, exemplary damages, and attorney's fees in favor of Carlos, Philharbor argues that Carlos failed to prove his allegations by clear and convincing evidence. It asserts that the uncorroborated testimony of Carlos does not satisfy the burden of proof required by law. Philharbor pointed out that Carlos even negated his own allegations of besmirched reputation and serious anxiety by stating that: (1) his reputation in the maritime industry remained intact; (2) he remained a consultant of other companies and even retained his professorial chair at the Philippine Merchant Academy Graduate School; and (3) he never

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[53] *Id.* at 25.

[54] *Id.* at 26–37.

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consulted with a psychiatrist or psychologist.[55] In sum, the award of damages and attorney's fees have no legal basis.[56]

In a Minute Resolution,[57] this Court required Carlos to file his comment to the present Petition.[58]

In his Comment,[59] Carlos argues that the issue of negligence or bad faith is a question of fact beyond the jurisdiction of a Rule 45 Petition.[60] In any case, he asserts that Philharbor failed to establish that his acts as chief operating officer were tainted with negligence or bad faith. Contrary to Philharbor's allegations, he exercised the necessary standard of care that a reasonable prudent person would have exercised under similar circumstances, thus, negating negligence or bad faith. To bolster this, Carlos pointed out that: (1) it is common industry experience that actual expenditures are higher than the budgeted amounts and hard to predict; (2) he relied on the recommendations, reports, or proposals of highly skilled individuals with technical expertise in the matter; (3) the corporation's standard procedure in the approval of the authority for capital projects expenditure was diligently observed and followed; and (4) the over-expenditures were fully accounted for and were signed by Christopher, the chief executive officer, who has the authority to approve it.[61]

As to the propriety of the grant of monetary awards and the imposition of interest rate, Carlos asserts that Philharbor acted in bad faith in filing a complaint against him. The timing of its filing renders suspect the true motive of Philharbor, which, according to Carlos, reeks of vindictiveness, if not, bad faith. In addition, Carlos claims that the present case was filed shortly

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55 *Id.* at 37–41.

56 *Id.* at 42–44.

57 *Id.* at 1281–1282.

58 *Id.* at 1282.

59 *Id.* at 1284–1298.

60 *Id.* at 1284–1286.

61 *Id.* at 1286–1289.

after he filed a labor complaint against Philharbor, APFC, and other constituent companies of the Archipelago Group before the NLRC. The baseless filing and its unwarranted publication damaged and besmirched his reputation in the industry. Questions arose regarding his credibility and competence. As a consequence, Carlos was forced to stop teaching and decline an account due to a possible conflict of interest. Assuming *arguendo* that he remained a consultant in other companies, his reputation was still besmirched in the industry because of the baseless complaint against him.[62]

In its Reply,[63] Philharbor submits that this Court has jurisdiction over the present Petition as it falls within the well-recognized exception, that is, factual questions may be raised in a Rule 45 Petition when the judgment is based on a misapprehension of facts. It reiterates its main contention that the unjustified and substantial increase of the authority for capital project expenditure for the subject vessels is a clear indication of negligence.[64] Further, Philharbor insists that an affirmative action from the board is still required considering that Carlos's authority as chief operating officer is limited only to the amount approved by the board of directors.[65] Lastly, Philharbor claims that the evidence presented by Carlos is insufficient to establish bad faith on the part of Philharbor. As such, the claim for moral damages, exemplary damages, and attorney's fees remains unsubstantiated on record.[66]

The issues for this Court's resolution are: *first*, whether the CA erred in ruling that Philharbor failed to establish his cause by the quantum of proof required by law; and *second*, whether the CA erred in awarding moral damages, exemplary damages, and attorney's fees to Carlos.

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[62] *Id.* at 1293–1296.

[63] *Id.* at 1308–1327.

[64] *Id.* at 1308–1312.

[65] *Id.* at 1313.

[66] *Id.* at 1319–1324.

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This Court's Ruling

The Petition is devoid of merit.

To begin, it bears underscoring that this Court's jurisdiction in a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is limited to the review of questions of law.[67] To invoke the discretionary power of review of this Court, procedural standards require, among others, that "the questions raised in it are of such substance as to warrant consideration."[68] We explained thus:

> [Q]uestions raised in a Rule 45 Petition must be of such substance as to warrant consideration is to say that judicial review shall proceed "only when there are *special and important reasons*." The use of the conjunctive "and" *vis-à-vis* the adjectives "special" and "important" means that the reasons invoked for review must be of distinctly significant consequence and value. Rule 45, Section 6 (a) and (b) illustrate the gravity of reasons which would move this Court to act:
>
> (a) When the court *a quo* has decided a question of substance, not theretofore determined by the Supreme Court, or has decided it in a way probably not in accord with law or with the applicable decisions of the Supreme Court; or
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> (b) When the court *a quo* has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by a lower court, as to call for an exercise of the power of supervision.[69] (Emphasis supplied, citation omitted)

When the issue raised pertains to the truth or falsity of the alleged facts, requiring a re-evaluation and recalibration of the

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[67] RULES OF COURT, rule 45, sec. 1 provides:
Section 1. *Filing of petition with Supreme Court*. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth. (1a, 2a)

[68] *Kumar v. People*, 874 Phil. 214, 222 (2020) [Per J. Leonen, Third Division].

[69] *Id.* at 223.

evidence on record,[70] it is a question of fact beyond the ambit of a Rule 45 Petition. In such case, this Court has the discretionary authority under Rule 45, Section 5 to deny outright or in due course the petition.[71]

However, in exceptional instances, this Court reviews factual issues:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[72] (Citations omitted)

In this case, Philharbor asks this Court to review anew its allegations of gross negligence and bad faith against Carlos in failing to monitor and manage the dry-docking expenses that resulted in serious losses to the corporation.

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[70] *Lopez v. Saludo*, G.R. No. 233775, September 15, 2021 [Per J. Hernando, Second Division].

[71] RULES OF COURT, rule 45, sec. 5 provides:
Section 5. *Dismissal or denial of petition*. — The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

The Supreme Court may on its own initiative deny the petition on the ground that the appeal is without merit, or is prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration. (3a)

[72] *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225 (1990) [Per J. Bidin, Third Division].

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It is settled that the existence of bad faith and the entitlement to damages[73] are factual in nature and would necessarily entail a review of the evidence presented during the trial. Contrary to Philharbor's allegations,[74] none of the well-recognized exceptions exist in the instant case.

We underscore that this Court is not a trier of facts.[75] It will not entertain questions of facts as the factual findings of the appellate courts are final, binding, and conclusive on the parties and upon this Court when supported by substantial evidence on record. It is not duty-bound to analyze, review, and weigh the evidence all over again in the absence of any showing of any arbitrariness, capriciousness, or palpable error.[76]

Even if this Court would proceed to discuss the issues raised, the Petition still fails.

We now delve into the issue on whether the CA erred in not declaring that Carlos was negligent or in bad faith in the performance of his duties as chief operating officer.

At the outset, the duties and responsibilities of corporate officers were first codified in 1980 under Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines. In 2019, amendments to the Code were introduced under Republic Act No. 11232,[77] otherwise known as the Revised Corporation Code of the Philippines. Given that the alleged acts complained of occurred before the effectivity of the amendatory law, the provisions of the Corporation Code remain controlling in the resolution of the present case.

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[73] *Mercado v. Ongpin*, 886 Phil. 822 (2020) [Per J. Leonen, Third Division], *citing Diaz v. Encanto*, 778 Phil. 593, 604 (2016) [Per J. Leonardo-De Castro, First Division].

[74] *Rollo*, pp. 1308–1312.

[75] *Manotok Realty, Inc. v. CLT Realty Development Corp.*, 512 Phil. 679, 706 (2005) [Per J. Sandoval-Gutierrez, Third Division].

[76] *Torres v. People*, 803 Phil. 480, 487 (2017) [Per J. Leonen, Second Division].

[77] An Act Providing for the Revised Corporation Code of the Philippines (2019).

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The management of a corporation is entrusted to its directors, trustees, and officers. As such, they hold a position of trust, and are bound by the exacting standards of their fiduciary position to the corporation and its stockholders. Sections 31 to 34 of the Corporation Code introduced the acts covered by the director's or corporate officer's fiduciary duties to the corporation and the consequences of such acts or omissions.[78] The content of the fiduciary duty of directors and officers compels undivided loyalty[79] and reasonable diligence in the conduct of corporate affairs.

In *Strategic Alliance Development Corp. v. Radstock Securities Limited*,[80] this Court summarized the three-fold duty of the members of the board of directors as follows:

> [T]he members of the board of directors have a three-fold duty: duty of obedience, *duty of diligence*, and duty of loyalty. Accordingly, the members of the board of directors: (1) shall direct the affairs of the corporation only in accordance with the purposes for which it was organized; (2) shall not willfully and knowingly vote for or assent to patently unlawful acts of the corporation or *act in bad faith or with gross negligence in directing the affairs of the corporation*; and (3) shall not acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees.[81] (Emphasis in the original)

In a similar manner, corporate officers owe a duty of diligence to the corporation and its stockholders. Essentially, the "duty of diligence covers the common law obligation of corporate officers to act with the due diligence of a prudent man in pursuing the

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[78] *Ient v. Tullett Prebon (Philippines), Inc.*, 803 Phil. 163 (2017) [Per J. Leonardo-de Castro, First Division]

[79] *Total Office Products and Services, Inc. v. Chang, Jr.*, G.R. Nos. 200070-71, December 7, 2021 [Per J. Inting, *En Banc*].

[80] 622 Phil. 431, 476–477 (2009) [Per J. Carpio, *En Banc*].

[81] *Total Office Products and Services, Inc. v. Chang, Jr.*, G.R. Nos. 200070-71, December 7, 2021 [Per J. Inting, *En Banc*].

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affairs of the corporation and in looking after the interests of the shareholders or members."[82]

The duty of diligence of corporate officers[83] is embodied under Section 31 of the Corporation Code, which reads:

> Section 31. *Liability of directors, trustees or officers*. – Directors or trustees who wil[l]fully and knowingly vote for or assent to patently unlawful acts of the corporation or who are *guilty of gross negligence or bad faith in directing the affairs of the corporation* or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be *liable jointly and severally for all damages resulting therefrom* suffered by the corporation, its stockholders or members and other persons.
>
> When a director, trustee or officer attempts to acquire or acquires, in violation of his [or her] duty, any interest adverse to the corporation in respect of any matter which has been reposed in him [or her] in confidence, as to which equity imposes a disability upon him [or her] to deal in his [or her] own behalf, he [or she] shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation. (Emphasis supplied)

In *Ient v. Tullett Prebon (Philippines), Inc.*,[84] this Court revisited the legislative deliberations in Cabinet Bill No. 3, which was later enacted into the Corporation Code. The pertinent portions read:

> (Period of Sponsorship, December 4, 1979 Session)
>
> MR. LEGASPI. x x x x
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> In Section 31 page 22, it seems that the proviso is to make the *directors or the trustees* who willfully and knowingly vote for or assent to patently unlawful act or *guilty of gross negligence or bad faith in directing the affairs of the corporation would be solidarily liable with the officers concerned*.

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[82] CESAR L. VILLANUEVA & TERESA S. VILLANUEVA-TIANSAY, PHILIPPINE CORPORATE LAW 447 (2022).

[83] *See Virata v. Ng Wee*, 813 Phil. 252 (2017) [Per J. Velasco, Jr., Third Division].

[84] 803 Phil. 163 (2017) [Per Leonardo-de Castro, First Division].

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Now, would this, Your Honor, not discourage the serving of competent people as members of the Board of Directors, considering that they might feel that in the event things would do badly against the corporation, they might be held liable personally for acts which should be attributed only to the corporation?

MR. MENDOZA. Your Honor will note that the directors or trustees who are held liable must be proven to have acted willfully and knowingly, or if not willfully and knowingly, it *must be proven that they acted with gross negligence or bad faith*. It must also be demonstrated that the acts done were patently unlawful. So, the requirement for liability is somewhat serious to the point of, in my opinion, being extreme. It will be noted that this provision does not merely require assenting to patently unlawful acts. It *does not merely require being negligent*. The provision requires that they assent to patently unlawful acts willfully and with knowledge of the illegality of the act.

Now, it might be true, as Your Honor suggested, that some persons will be discouraged or disinclined to agree to serve the Board of Directors because of this liability. But at the same time *this provision – Section 31 – is really no more than a consequence of the requirement that the position of membership in the Board of Directors is a position of high responsibility and great trust*. Unless a provision such as this is included, then that requirement of responsibility and trust will not be as meaningful as it should be. For after all, directors may take the attitude that unless they themselves commit the act, they would not be liable. But the responsibility of a director is not merely to act properly. The responsibility of a director is to assure that the Board of Directors, which means his colleagues acting together, does not act in a manner that is unlawful or to the prejudice of the corporation because of personal or pecuniary interest of the directors.[85] (Emphasis supplied, citation omitted)

As a rule, corporate officers,[86] acting in good faith and within the scope of their authority, does not incur any personal liability

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[85] *Id.* at 195–196.

[86] Batas Pambansa Bilang 68 (1980), sec. 25 provides:
SECTION 25. *Corporate Officers, Quorum*. — Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a

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for acts made in the performance of their official functions on account of the separate legal personality of the corporation.[87] On this note, *Kho, Sr. v. Magbanua* explains that:

> [A] corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. As a juridical entity, a corporation may act only through its directors, officers, and employees. As such, obligations incurred by the corporation, acting through its directors, officers, and employees, are its sole liabilities, and these persons should not be held jointly and solidarily liable with the corporation. However, being a mere fiction of law, this corporate veil can be pierced when such corporate fiction is used: (*a*) to defeat public convenience or as a vehicle for the evasion of an existing obligation; (*b*) to justify wrong, protect or perpetuate fraud, defend crime, or as a shield to confuse legitimate issues; or (*c*) as a mere alter ego or business conduit of a person, or is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit, or adjunct of another corporation.[88]

Thus, personal liability may attach upon a corporate officer when:

1. [The corporate director, trustee or officer] assents (a) to a patently unlawful act of the corporation, or (b) for *bad faith or gross*

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director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.

The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation. Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the board.

[87] *Pioneer Insurance & Surety Corp. v. Morning Star Travel & Tours, Inc.*, 763 Phil. 428, 440–441 (2015) [Per J. Leonen, Second Division].

[88] *Kho, Sr. v. Magbanua, et al.,* 858 Phil. 409, 418–419 (2019) [Per J. Perlas-Bernabe, Second Division].

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negligence in directing its affairs, or (c) for conflict of interest, resulting in damages to the corporation, its stockholders or other persons;

2. He [or she] consents to the issuance of watered stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his [or her] written objection thereto;

3. He [or she] agrees to hold himself [or herself] personally and solidarily liable with the corporation; or

4. He [or she] is made, by a specific provision of law, to personally answer for his [or her] corporate action.[89] (Emphasis supplied, citation omitted)

To hold a director, trustee, or corporate officer personally liable, the following elements must concur: (a) a clear allegation in the complaint of gross negligence, bad faith or malice, fraud, or any of the enumerated exceptional instances; and (b) clear and convincing proof of said grounds relied upon in the complaint sufficient to overcome the burden of proof borne by the complainant.[90]

In the present case, Philharbor imputes gross negligence and bad faith on the part of Carlos for his acts as chief operating officer that resulted in financial losses upon the corporation on account of the excess expenditure in the dry docking of M/V Maharlika Dos and M/V Maharlika Siete without the approval of the Board of Directors.

We remain unconvinced.

Gross negligence is defined as negligence characterized by

[T]he want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them; the want or absence of or failure to

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[89] *Pioneer Insurance & Surety Corp. v. Morning Star Travel & Tours, Inc., et al.*, 763 Phil. 428, 441 (2015) [Per J. Leonen, Second Division].

[90] *Kho, Sr. v. Magbanua, et al.*, 858 Phil. 409, 419–420 (2019) [Per J. Perlas-Bernabe, Second Division].

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exercise slight care or diligence, or the entire absence of care.[91] (Citations omitted)

Verily, gross negligence involves an element of intent,[92] not mere carelessness or indifference to do one's duty, but a flagrant and palpable breach of duty.

Meanwhile, bad faith does not simply connote bad judgment or negligence. It "imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, not simply bad judgment or negligence. It is synonymous with fraud, in that it involves a design to mislead or deceive another."[93] In expounding the legal concept, We held that:

> [B]ad faith denotes a dishonest purpose, moral deviation, and a conscious commission of a wrong. It includes "a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud. It is, therefore, a question of intention, which can be inferred from one's conduct and/or contemporaneous [...] statements". Bad faith under the law cannot be presumed; it must be established by clear and convincing evidence.[94] (Citations omitted)

Settled is the rule that bad faith is never presumed.[95] It must be established by clear and convincing evidence since the law always presumes good faith.[96] Concomitantly, the burden of proof is on the one who asserts, not on one who denies; since, by the nature of things, one who denies a fact cannot produce any proof of it.[97]

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91 *Sanchez v. Republic*, 618 Phil. 228, 237 (2009) [Per J. Abad, Second Division].

92 *Trinidad, Jr. v. Office of the Ombudsman*, 891 Phil. 261, 274 (2020) [Per J. Lopez, Second Division].

93 *Solidbank Corporation v. Mindanao Ferroalloy Corporation*, 502 Phil. 651, 670 (2005) [Per J. Panganiban, Third Division]. Citations omitted.

94 *Tocoms Philippines, Inc. v. Philips Electronics and Lighting, Inc.*, 870 Phil. 241, 298 (2020) [Per J. A. Reyes, Jr., Second Division].

95 *Pioneer Insurance & Surety Corp. v. Morning Star Travel & Tours, Inc.*, 763 Phil. 428, 444 (2015) [Per J. Leonen, Second Division]; *Carag v. National Labor Relations Commission*, 548 Phil. 581, 602 (2007) [Per J. Carpio, *En Banc*].

96 *Spouses Espinoza v. Spouses Mayandoc*, 812 Phil. 95, 103 (2017) [Per J. Peralta, Second Division].

97 *Nedira v. NJ World Corp.*, G.R. No. 240005, December 6, 2022 [Per C.J. Gesmundo, *En Banc*].

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After a careful review of the records, We find that Philharbor failed to substantiate its allegations of gross negligence and bad faith by the quantum of proof required by law, that is, by clear and convincing evidence. The records are bereft of any evidence that Carlos acted in bad faith, with gross or inexcusable negligence, or that he acted outside the scope of his authority as chief operating officer. On the contrary, the internal procedures for the preparation and release of the authorities for capital projects expenditure were complied with. This fact was admitted to by Jagonoy, the witness presented by Philharbor. Philharbor failed to identify the specific acts or omissions of negligence committed by Carlos that, directly or indirectly, caused damage or prejudice to the corporation. Instead, it merely gave broad and sweeping arguments of alleged negligence and bad faith. The fact that there has been over expenditure, without more, is not evidence of negligence. Further, mere invocation of the words negligence and bad faith without specifying the circumstances surrounding, falls short of the requirement of particularity of averment under the Rules of Court.

We echo with approbation the following disquisition of the CA:

> Philharbor's theory in holding [Carlos] personally liable due to bad faith or negligence is nothing short of absurd: that the authority and control [Carlos] possessed as [chief operating officer] made any internal process for check and balance inutile, and that the collective responsibility and accountability of all of Philharbor's officers and employees fall on the shoulders of a single person. . . What Philharbor aims with this case is to hold [Carlos] personally liable for every expenditure in excess of the approved budget and all the resulting losses incurred by the vessels based on its assumption that he alone could have prevented such losses due to his position as [chief operating officer].
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> . . . .
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> [T]he matters which Philharbor uses to hold [Carlos] liable are outside his control. *First*, the expenses incurred for the dry docking and repair of the two vessels, however exorbitant or excessive Philharbor claims it to be, are not subject to the approval of [Carlos] but that of Christopher, being the signatory to all of Philharbor's checks. [Carlos] merely prepares the budget upon the recommendation of the Technical Department, and any variance therefrom are still subject to Christopher's approval, with

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or without [Carlos]'s recommendation. *Second*, the delay in the release of the two vessels from their respective shipyards after repairs are subject to the approval of the classification society and MARINA after inspection and audit since they are in charge of issuing the appropriate certificates to allow the vessels to operate. *Third*, whatever authority and control Philharbor imputes [Carlos] had as [chief operating officer] are in fact possessed by Mary Ann, who not only has authority to approve [check vouchers] even without [Carlos]'s approval, but is also in charge of procuring supplies, materials, and services. It would be illogical for Philharbor to charge [Carlos] with negligence alone for going over the approved budget if the officer who oversees the procurement process is not charged with negligence as well, since this Court is of the opinion that the pricing of the procured goods or services has a more significant correlation to any expenditure in excess of the approved budget.[98]

At any rate, it is common knowledge that engaging in business comes with risks of incurring financial losses. In the absence of bad faith, acts of a corporate officer are covered by the business judgment rule, which provides that:

> Questions of policy and of management are left to the honest decision of the officers and directors of a corporation, and the courts are without authority to substitute their judgment for the judgment of the board of directors. The board is the business manager of the corporation, and so long as it acts in good faith, its orders are not reviewable by the courts.[99]

Stated differently, corporate officers, acting within the scope of their authority and in good faith, are not liable for simple oversight or ordinary negligence. To rule that corporate officers should be liable for all acts committed in the performance of their duties that invariably result to loss upon the corporation would impose unnecessary burden upon such officers and impossibly restrict the free exercise of their discretion in making business decisions, beyond the contemplation of the law. Corporate officers only become liable when, among others, their acts are attended by

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[98] *Rollo*, pp. 70–72.

[99] *Cua, Jr. v. Tan*, 622 Phil. 661, 713 (2009) [Per J. Chico-Nazario, Third Division].

bad faith or gross negligence. After all, corporate officers are not absolute insurers of the economic viability of the corporation they represent.

Now, the remaining issue for this Court's resolution is the propriety of the award of moral damages, exemplary damages, and attorney's fees to Carlos.

Philharbor seeks the reversal of the award of damages and attorney's fees on account of the fact that: (1) Carlos's reputation in the maritime industry remained intact even after his separation from Philharbor and the filing of the present case; (2) Carlos was already awarded moral damages in the labor complaint he filed against the Archipelago Group, which was based on the same facts and circumstances; and (3) Carlos failed to consult with a psychiatrist or psychologist.

We do not agree.

Under Article 2219 of the Civil Code, moral damages may be recovered, among others, in acts and actions referred to in Article 21 of the same Code. To be awarded, there must be clear showing that the party claiming it actually experienced physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury resulting from a wrongful act or omission.[100] In this case, the malicious act of Philharbor in filing a baseless complaint against Carlos and publishing it in a newspaper of general circulation aggravated the emotional suffering of Carlos. The fact that the notices were published even without ascertaining the liability or culpability of Carlos suggests that the act was primarily made to discredit him.

Meanwhile, exemplary or corrective damages are imposed by way of example or correction for the public good.[101] It is imposed as a punishment for highly reprehensible conduct and serves as a notice to prevent the public from the repetition of socially

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[100] *Lomarda v. Fudalan*, 874 Phil. 689, 706 (2020) [Per J. Perlas-Bernabe, Second Division].

[101] CIVIL CODE, art. 2229.

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deleterious actions.[102] In the present case, Philharbor's sweeping accusations and unfounded imputations against Carlos militates against any finding that this case was filed with purely legitimate motives.

In view of the award of exemplary damages, this Court finds the award of attorney's fees proper pursuant to Article 2208 of the Civil Code.[103]

All monetary awards shall earn interest at the rate of 6% per annum from the date of finality of this Decision until fully paid.[104]

ACCORDINGLY, the Petition is **DENIED**. The December 19, 2022 Decision and March 30, 2023 Resolution of the Court of Appeals in CA-G.R. CV No. 112692 are **AFFIRMED**.

Petitioner Philharbor Ferries and Port Services, Inc. is **ORDERED** to pay the respondent Francis C. Carlos the following amounts: PHP 300,000.00 as moral damages; PHP 200,000.00 as exemplary damages; and PHP 100,000.00 as attorney's fees.

All damages awarded shall earn a 6% interest per annum from the finality of this Decision until full payment.

SO ORDERED.

Leonen, S.A.J. (Chairperson), Lazaro-Javier, M. Lopez, and *Kho, Jr., JJ.*, concur.

APPEARANCES OF COUNSEL

Surtida & Hernandez Torbela Attorneys-At-Law for petitioner.
Tolentino Corvera Macasaet & Reig for respondent.

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[102] *Guy v. Tulfo, et al.*, 851 Phil. 748, 770 (2019) [Per J. Leonen, Third Division].

[103] CIVIL CODE, art. 2208 states:
Art. 2208. In the absence of stipulation, attorney's fees, and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded[.]

[104] *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013) [Per J. Peralta, *En Banc*].